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(3)

No. 06-1594

In the Supreme Court of the United States

TAYLOR AYES, ET AL., PETITIONERS

v.

DEPARTMENT OF VETERANS AFFAIRS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether 11 U.S.C. 525(a), which prohibits the government from denying an individual a "license, permit, charter, franchise, or other similar grant" solely because the individual has filed for or received a discharge in bankruptcy, covers the denial of a veteran home loan guaranty.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16) is reported at 473 F.3d 104. The opinion of the district court (Pet. Supp. App. 1-18) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 27, 2006. A petition for rehearing was denied on February 23, 2007 (Pet. App. 17-18). The petition for a writ of certiorari was filed on May 24, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Under the Servicemen's Readjustment Act of 1944 (Act), as now codified at 38 U.S.C. 3701 *et seq.*, the United States Department of Veterans Affairs (VA) guarantees loans made by private lenders to qualifying

veterans for buying or building homes. 38 U.S.C. 3710(a). If a veteran defaults on a guaranteed loan, the VA pays the private lender the guaranteed amount. 38 U.S.C. 3732(a)(1). With regard to the guaranteed loans at issue in this case, if the VA has made a payment on a defaulted loan, the veteran becomes indebted to the United States in the amount paid by the VA. See *ibid.*; 38 C.F.R. 36.4323.

The Act places no limit on the number of times that a veteran may receive a loan guaranty but grants each veteran only a finite loan guaranty entitlement. The amount of the guaranty available to each veteran is therefore generally reduced by the amount of any loss that the VA suffered on a previous guaranty on behalf of the veteran, until that loss is repaid. Pet. App. 4-5. A veteran generally must repay the loss in order to receive his full guaranty entitlement. 38 U.S.C. 3702(b)(1)(A) and (B); 38 C.F.R. 36.4302(i).

b. Under Section 525(a) of the Bankruptcy Code, "a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, * * * [or] discriminate with respect to, such a grant against * * * a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, * * * solely because such bankrupt or debtor * * * has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act." 11 U.S.C. 525(a).

2. Petitioners are six veterans who received loan guaranties from the VA and defaulted on their loans, leaving the VA to make the associated guaranty claim payments. Petitioners later received discharges in bankruptcy under either Chapter 7 or Chapter 11 of the

Bankruptcy Code with respect to their obligations to repay the VA for its losses on the loan guaranties. After petitioners received discharges in bankruptcy, they applied for additional loan guaranties from the VA. The VA denied petitioners the maximum loan guaranties because they had not repaid the losses that the VA had suffered as a result of their previous defaults. Subsequently, private lending institutions denied petitioners' loan applications. Pet. App. 6.

3. Petitioners sued the VA in the United States District Court for the Eastern District of North Carolina, alleging violations of their rights under 11 U.S.C. 525(a) and 38 U.S.C. 3701 *et seq.* Pet. Supp. App. 1. Petitioners claimed that the VA's refusal to provide full guaranties of their loans after the discharge of their debts in bankruptcy violated 11 U.S.C. 525(a). Pet. Supp. App. 3. The district court granted the VA's motion to dismiss petitioners' complaint. *Id.* at 1-18. The court concluded that the VA had not violated Section 525(a) because a VA home loan guaranty is not "a license, permit, charter, franchise, or other similar grant." *Id.* at 4; see *id.* at 4-18.

4. The court of appeals affirmed. Pet. App. 1-16. In the court of appeals, petitioners conceded that a home loan guaranty is not a license, permit, charter, or franchise, but they argued that it is nonetheless covered by Section 525(a) because it is a "similar grant." *Id.* at 8. The court of appeals rejected that argument because a home loan guaranty bears no resemblance to the other items listed in Section 525(a). *Ibid.* The court explained that, unlike licenses, permits, charters, and franchises, a home loan guaranty is not a governmental authorization, solely under government control, that grants permission for an individual to pursue an endeavor aimed at

his economic improvement. *Id.* at 9. The court noted that the items expressly covered by Section 525(a) all implicate the "government's role as a gatekeeper in determining who may pursue" certain economic activities. *Id.* at 10 (quoting *Toth* v. *Michigan State Hous. Dev. Auth.*, 136 F.3d 477, 480 (6th Cir.), cert. denied, 524 U.S. 954 (1998)). "A home loan guaranty," in contrast, "does not implicate the government's gate-keeping role" because "a person can obtain a home loan or guaranty from the private sector." *Ibid.*

The court of appeals rejected petitioners' reliance on *In re Stoltz*, 315 F.3d 80 (2d Cir. 2002), which held that a public housing lease is a "similar grant" under Section 525(a). Pet. App. 11 n.4. The court explained that its holding that a VA home loan guaranty is not a "similar grant" is fully consistent with *Stoltz*, which concluded that Section 525(a) covers "property interests [that] are unobtainable from the private sector and essential to a debtor's fresh start" after bankruptcy. *Ibid.* (quoting *Stoltz*, 315 F.3d at 90). The court noted that, unlike a public housing lease, a home loan guaranty may be obtained from sources other than the government. And, although a public housing lease may be essential to "economic survival" because loss of the lease could lead to homelessness, a home loan guaranty is not similarly essential. *Ibid.* (quoting *Stoltz*, 315 F.3d at 90). A veteran who is unable to obtain a VA loan guaranty may obtain a home loan on less favorable terms or may choose an alternative housing arrangement that does not involve ownership. Moreover, VA home loan guaranties are not limited to the economically disadvantaged but are available regardless of need. *Ibid.*

The court of appeals concluded that *In re Goldrich*, 771 F.2d 28 (2d Cir. 1985), is the closest analogue to this

case. Pet. App. 11. The court explained that *Goldrich* held that Section 525(a) was inapplicable to New York's student loan guaranty program because a loan guaranty is not a "similar grant." *Id.* at 12. The court acknowledged that Congress abrogated the specific holding in *Goldrich* by enacting 11 U.S.C. 525(c), which extends the anti-discrimination protections of 11 U.S.C. 525 to student loans and guaranties. Pet. App. 13. But the court noted that Congress had carefully limited the scope of Section 525(c) to student loans and had not revised Section 525(a). *Ibid.* The court therefore concluded that Section 525(c) supported rather than undermined *Goldrich*'s conclusion that Section 525(a) does not cover credit guarantees. *Id.* at 13-14 (noting that the "time honored maxim *expressio unius est exclusio alterius* * * * applies with great force here").

The court of appeals also observed that other circuits had reached similar conclusions about the meaning of the phrase "other similar grant." Pet. App. 14-15 (citing, *e.g.*, *Toth*, 136 F.3d at 479-480 (holding that a government home improvement loan is not an "other similar grant"), and *Watts* v. *Pennsylvania Hous. Fin. Co.*, 876 F.2d 1090, 1093-1094 (3d Cir. 1989) (holding that a state emergency mortgage assistance loan is not an "other similar grant")). The court therefore "refuse[d] to venture beyond the confines of the statutory language," *id.* at 14, noting that, "if Congress wishes to extend § 525's protections to other kinds of loan guaranties besides student loan guaranties, it can easily do so with a few strokes of the pen," *id.* at 16.

ARGUMENT

The decision of the court of appeals is correct, and it does not conflict with any decision of this Court or an-

other court of appeals. This Court's review is therefore not warranted.

1. The court of appeals correctly concluded that Section 525(a) does not extend to VA home loan guaranties. Section 525(a) covers only the denial of "a license, permit, charter, franchise, or other similar grant." 11 U.S.C. 525(a). As the court of appeals explained, although a home loan guaranty may be a "grant," the statute covers only those grants "bearing a family resemblance to licenses, permits, charters, and franchises." Pet. App. 9. That limitation flows from the statute's express terms, which restrict covered grants to those "similar" to the listed items. 11 U.S.C. 525(a). And that limitation accords with ordinary principles of statutory construction. Under the principle of *ejusdem generis*, when "general words follow specific words in a statutory enumeration, * * * the general words" are construed "to embrace only objects *similar* in nature to those objects enumerated by the preceding specific words." Pet. App. 9 n.3 (quoting *Washington Dep't of Soc. & Health Servs.* v. *Guardianship Estate of Keffeler*, 537 U.S. 371, 384 (2003)).

As the court of appeals correctly observed (Pet. App. 9-11), a home loan guaranty does not resemble the items specifically enumerated in Section 525(a). Licenses, permits, charters, and franchises all implicate the "government's role as a gatekeeper" in granting or denying "permission to pursue certain occupations or endeavors." *Toth* v. *Michigan State Hous. Dev. Auth.*, 136 F.3d 477, 480 (6th Cir.), cert. denied, 524 U.S. 954 (1998); see *Watts* v. *Pennsylvania Hous. Fin. Co.*, 876 F.2d 1090, 1093 (3d Cir. 1989). "A home loan guaranty, on the other hand, does not implicate the government's gate-keeping role." Pet. App. 10. A loan guaranty does

not authorize an individual to engage in an activity; rather, it is an economic subsidy. In addition, loan guaranties are available from a variety of sources other than the government. *Ibid.* A person can obtain a loan guaranty from family, friends, or private financial institutions. Thus, "[a] credit guarantee is not" a "similar grant" covered by Section 525(a). *In re Goldrich*, 771 F.2d 28, 30 (2d Cir. 1985); accord *Toth*, 136 F.3d at 480 ("The items enumerated in the statute * * * are benefits conferred by the government that are unrelated to the extension of credit.").

Every court of appeals that has addressed the issue has concluded, like the court of appeals here, that Section 525(a) does not cover loans or loan guaranties. For example, in *Watts*, the Third Circuit concluded that a loan under a state program designed to forestall mortgage foreclosure was not a "similar grant" within Section 525(a) because it was not "authority from a governmental unit to the authorized person to pursue some endeavor." 876 F.2d at 1093. For similar reasons, the Sixth Circuit held in *Toth* that a low-income home improvement loan was not a "similar grant." See 136 F.3d at 478-479, 480. And the Fourth Circuit, in a previous unpublished opinion, concluded that a rural housing loan from the Farmers Home Administration was not covered by Section 525(a) because "the determination of whether to extend credit is not an application for a 'license, permit, charter, franchise, or other similar grant.'" *Bryant* v. *United States*, No. 96-1161, 1997 WL 633256, at *1 (Oct. 14, 1997) (125 F.3d 847 (Table)); accord *Goldrich*, 771 F.2d at 30.

2. Petitioners incorrectly contend (Pet. 7, 8-11) that the decision of the court of appeals conflicts with *FCC* v. *NextWave Personal Communications, Inc.*, 537 U.S. 293

(2003), which they assert requires "a broad interpretation of Section 525(a) in order to protect the fresh start" principle. Pet. 11.

The decision below does not conflict with *NextWave*. In *NextWave*, this Court held that Section 525(a) prohibits the Federal Communications Commission from revoking communications licenses held by a debtor in bankruptcy upon the debtor's failure to make timely payments owed to the Commission with respect to the licenses. 537 U.S. at 295, 301. No one disputed that the communications licenses at issue in *NextWave* were "licenses" within the meaning of Section 525(a). *Id.* at 301. Accordingly, this Court had no occasion to interpret the phrase "other similar grant," much less to decide whether loans or loan guaranties are encompassed by that phrase.

Contrary to petitioners' assertions (Pet. 7, 11), moreover, the Court in *NextWave* did not endorse a "broad interpretation" of Section 525(a) in order to advance the principle that debtors who receive a discharge in bankruptcy are entitled to a fresh start unburdened by their prior debts. Instead, the Court focused on the statutory language. The Court refused to read into that language an exemption for license denials based on a valid regulatory purpose because, when Congress intended exemptions to the statute's coverage, it provided them expressly. See 537 U.S. at 301. The Court criticized the dissent for invoking the purposes of the statute in disregard of the text. See *id.* at 304-305. And the Court rejected the dissent's reliance on the fresh start policy in particular. See *id.* at 305 n.4. The Court explained that reliance on the fresh start policy is "circular" because the "whole issue" of interpreting Section 525(a) "can be described as asking what the Bankruptcy Code's prom-

ise of 'fresh start' consists of." *Ibid.* Thus, to the extent *NextWave* is relevant at all, it supports rather than undermines the court of appeals' reliance on the plain language of Section 525(a) to conclude that the statute does not cover home loan guaranties.

3. Petitioners also err in contending (Pet. 11-17) that the decision of the court of appeals conflicts with *In re Stoltz*, 315 F.3d 80 (2d Cir. 2002). The question in *Stoltz* was whether a public housing lease is a "similar grant," not whether a loan guaranty meets that description. Moreover, contrary to petitioners' contentions (Pet. 12), the reasoning in *Stoltz* is fully consistent with the conclusion of the court below that a VA home loan guaranty is not a "similar grant." In *Stoltz*, the Second Circuit reasoned that Section 525(a) covers "property interests [that are] unobtainable from the private sector and essential to a debtor's fresh start." 315 F.3d at 90. As the court below noted in distinguishing *Stoltz*, a home loan guaranty, unlike a public housing lease, meets neither of those criteria. See Pet. App. 11 n.4. Loan guaranties are available from a variety of sources other than the government—family, friends, and private financial institutions. See *ibid.* Nor are loan guaranties essential to a fresh start. The court in *Stoltz* concluded that a public housing lease may be essential to "economic survival" because loss of the lease could lead to homelessness. 315 F.3d at 90. But, as the court below explained, a home loan guaranty is not similarly essential: a veteran who is unable to obtain a loan guaranty may obtain a home loan on less favorable terms or may choose an alternative housing arrangement that does not involve ownership. Pet. App. 11 n.4.

Petitioners argue (Pet. 12-13) that loan guaranties *from the VA* are available only from the government,

just as public housing leases are. Pet. 12. The relevant comparison, however, is not to guaranties offered exclusively by the VA, but to loan guaranties generally. Petitioners also point out (Pet. 14-15) that the purpose of the VA loan guaranty program is to promote the economic betterment of veterans. That may be true, but it does not mean that VA loan guaranties are "essential to a debtor's fresh start." *Stoltz*, 315 F.3d at 90. A loan guaranty likely improves a veteran's economic lot, but it is not *essential* for a fresh start, because an individual denied a loan guaranty still has a diverse array of housing options, including buying a home with less desirable loan arrangements or renting.

Petitioners also incorrectly argue (Pet. 16-17) that the decision below conflicts with *Stoltz* because the court below relied on the Second Circuit's earlier decision in *Goldrich*, and statements in *Stoltz* cast doubt on the continued validity of that decision. This Court, however, "reviews judgments not statements in opinions." *Black* v. *Cutter Labs.*, 351 U.S. 292, 297 (1956). In any event, contrary to petitioner's argument, *Stoltz* did not disavow the reasoning in *Goldrich*. *Stoltz* merely noted that Congress, by enacting Section 525(c), had abrogated *Goldrich*'s holding that Section 525 does not cover student loans. See *Stoltz*, 315 F.3d at 86 n.2. The court of appeals here acknowledged that Section 525(c) abrogated the specific holding of *Goldrich*, but the court pointed out that nothing in Section 525(c) calls into question *Goldrich*'s more general conclusion that Section 525(a) does not cover credit guarantees. Pet. App. 13. Indeed, as the court of appeals noted, in responding to *Goldrich*, Congress did not revise Section 525(a) but instead added Section 525(c), which covers only *student* loans and guaranties. That course of action reinforces,

rather than undermines, the conclusion that Section 525(a) does not cover loans and guaranties. See *ibid.*

4. Finally, petitioners mistakenly contend (Pet. 17-18) that this Court's review is warranted because the court of appeals' interpretation of Section 525(a) is harmful to veterans. Contrary to petitioners' argument, concern for veterans' financial welfare may counsel against expanding Section 525(a) to cover veteran home loan guaranties. As the court of appeals observed, requiring the VA to grant the maximum possible guaranty to a veteran regardless of whether the VA has suffered a loss because of that veteran's prior default could jeopardize the financial health of the loan guaranty program and threaten its long-term viability. Pet. App. 16. In any event, the decision whether to amend Section 525(a) to protect veterans who defaulted on their loans and sought bankruptcy protection is Congress's to make. As the court of appeals noted, Congress could make that change "with a few strokes of the pen." *Ibid.* There is no reason or authority for this Court to take on that legislative function.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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